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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1980

No. 80-1602

THE ILLINOIS STATE DENTAL SOCIETY, ET AL.,
Petitioners,

vs.

HELEN SCHILLER, ET AL.,
Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Seventh Circuit.

PETITIONER'S REPLY BRIEF

VIEWED IN THE CONTEXT OF §§ 5 AND 5a OF THE ILLINOIS DENTAL PRACTICE ACT, "DENTURISM" IS NOTHING MORE THAN ADMITTED ILLEGAL DENTISTRY, AND IS CONDUCT IDENTICAL TO THAT ENJOINED IN AAA. RESPONDENTS' MERE RELABELING OF THAT CONDUCT CANNOT ENABLE THEM TO ESCAPE THE AAA HOLDING.

This Reply Brief is compelled by an ambitious, albeit transparent, argument raised by Respondents in their Brief in Opposition in No. 80-1602, The Illinois State Dental Society, et al., v. Helen Schiller, et al—i.e., that by merely relabeling conduct long upheld by the courts as illegal one can somehow render that conduct less unlawful.

Respondents claim that "denturism" is somehow differentiated from the conduct at issue in *People v. AAA Dental Laboratories,* 8 Ill.2d 330, 134 N.E.2d 285, *appeal dismissed* 352 U.S. 863 (1956), and that this Court's dismissal of the *AAA* appeal, for want of a substantial federal question, does not therefore bar Respondents' present action. Such an attempted ruse, Petitioners submit, must not pass unrebutted.

Viewed in the context of §§ 5 and 5a of the Illinois Dental Practice Act, (Ill.Rev.Stat., 1977, ch. 111, sec. 2217 and 2218; *see* Petition for Writ, at 39a-43a for text), "denturism" is nothing more than admitted illegal dentistry. Obscured, but not overcome, by Respondents' irrelevancies and self-serving acclamations about denturism remains one essential fact: the acts which constitute Respondents' alleged "profession"—i.e., the taking of impressions for and fitting of dental prostheses for the public by non-dentists—are identical to those acts which the defendant dental technicians were enjoined from performing in *AAA*. The subject conduct was in violation of the Illinois Dental Practice Act at the time the *AAA* case was initiated and remains so today, the only difference being that in the interim both the Illinois Supreme Court and the United States Supreme Court have stamped the provisions which proscribed that conduct as constitutional.

Respondents argue that "in reality," *AAA* "dealt only with the prohibitions against dental technicians and dental laboratories, not non-dentists." Brief in Opposition, at 8-9. Respondents would have this Court believe that the Illinois Supreme Court's inability to divine the particular labels which non-dentists might later assume somehow limits *AAA's* application to prohibited acts by any and *all* non-dentists. The following passage from *AAA* demonstrates otherwise:

> The evidence establishes that the knowledge and skill *of the dentist* is necessary in the diagnosis of the case, the taking of impressions, the issuance of instructions to the laboratory and the testing, fitting and adjustments of a prosthetic denture. . . . In our opinion the power of the legislature is not exhausted when it has provided that there shall be professional supervision at the *inception and the conclusion of what is essentially a single process. It may, if it sees fit, go further and insure that responsibility to the patient shall not be fragmented, and it may focus that responsibility upon a member of the profession which it regulates.*

People v. AAA Dental Laboratories, 8 Ill.2d 330, 334-35, 134 N.E.2d 285, 289 (1956) (emphasis supplied); (*see* Petition for Writ, at 102a). That "profession" is, of course, dentistry.

Clearly, the *AAA* case applies with equal force to non-dentists of *all* stripes, the focus being on those persons' conduct, not their calling cards. That the Seventh Circuit adopted the "denturist" nomenclature in its opinion has, therefore, no significance whatsoever beyond identifying the "non-dentists" in their latest incarnation.

Petitioners are not, as Respondents argue, bound to "concede, not oppose, before this Court the properly pleaded factual existence of Denturism as established in Respondents' Complaint." Brief in Opposition, at 6. Respondents' attempt to escape *AAA* by assigning a new label to long-prohibited acts constitutes an argumentative and conclusory averment rather than a factual allegation, and as such is not admitted by a motion to dismiss. *Wise v. City of Chicago*, 308 F.2d 364 (7th Cir.), *cert. denied* 372 U.S. 944 (1962). The principle stated in *Wise* finds particular application here, for it would be ludicrous to foist upon Petitioners as "admitted"

everything in the over 500 pages of irrelevancies, evidentiary offerings, and argumentative conclusions in Respondents' rambling complaint.

In the final analysis, Respondents' asserted differentiation between "denturism" and the acts made the subject of the *AAA* decision is only an elaborate subterfuge, a "house-of-cards" much akin to Respondents' complaint in general. Shorn of its many irrelevancies about the illegal business Respondents today call "denturism," Respondents' action boils down to nothing more than a replay of the challenge made by the non-dentists in *AAA* to the legislative judgment embodied in the Illinois Dental Practice Act. Unfortunately for Respondents, their attempted end-run around that judgment has been blocked by this Court's dismissal of the *AAA* appeal and by the principle of *Hicks v. Miranda,* 422 U.S. 332 (1975).

The present action being "on all fours" with that previous dismissal, this Court should grant the Writ of Certiorari requested, and reverse the decision of the Court of Appeals.

Respectfully submitted,

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